

matter. The Committee called Eckstein and Babbitt both to testify in separate appearances on Oct. 30.

Sometime prior to Oct. 21, Secretary Babbitt requested that the Interior Department's Solicitor's Office prepare a memorandum addressing the applicability of 18 U.S.C. §1001, the criminal law prohibiting making false statements to federal agencies, to his August 1996 letter to Sen. McCain. The resulting memo, dated Oct. 21, concluded that the statute did not apply to statements to Congress during the period up to Oct. 11, 1996, including the date of Babbitt's letter to McCain.⁶³⁸

Babbitt acknowledged having asked for this legal advice, probably through Leshy. No one recalls a substantive discussion with Babbitt about his concerns underlying his request. Babbitt found the conclusion of the memo to be "not terribly clear," and he was not fully "persuaded" by it.⁶³⁹ However, he conceded he understood the ultimate conclusion – that his letter to McCain in August 1996 could not constitute a violation of that statute. Babbitt said he asked for the research because he was "getting a little worried . . . they were going to try to make a case against me on the McCain letter."⁶⁴⁰ As Babbitt testified, "[t]he purpose of this [memo]

⁶³⁸As explained further below in Section III.C.2.a., the memo based its conclusion on the Supreme Court's 1995 opinion in *Hubbard v. United States*, 514 U.S. 695 (1995), which held that 18 U.S.C. § 1001 did not criminalize willfully false statements made to the U.S. Congress. A year later, Congress responded to the ruling by amending Section 1001 to apply explicitly to such statements. *See* 18 U.S.C. § 1001 (1994 & Supp. II 1996).

⁶³⁹Babbitt G.J. Test., July 7, 1999, at 258.

⁶⁴⁰*Id.* at 255.